

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

JAMES A COLEMAN, III

CASE NO. 98-63268

Debtor

Chapter 13

APPEARANCES:

MARK W. SWIMELAR, ESQ.
Chapter 13 Trustee
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LYNN HARPER-WILSON, ESQ.
Of Counsel

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JAMES A. MEGGESTO, ESQ.
Of Counsel

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Under consideration by the Court are two motions filed in the bankruptcy case of James A. Coleman, III ("Debtor"). The first motion, filed on November 17, 1998, by Mark W. Swimelar, Esq., the chapter 13 trustee in the case ("Trustee"), requests turnover of monies held

by the Onondaga County Treasurer.¹ The Trustee's motion is opposed by Gail Coleman ("G. Coleman"), Debtor's former wife.

The second motion, filed on November 18, 1998, by G. Coleman seeks relief from the automatic stay to allow the Interpleader Action to continue in State Court for the purpose of determining the right and title to the proceeds of the Annuity. The Debtor, as well as the Trustee, filed opposition to G. Coleman's motion. Also opposing the motion is Mary Dell Nelson ("Nelson"), a defendant, along with the Debtor and G. Coleman, in the Interpleader Action.

The Court also has before it a Motion for Remand of the Interpleader Action, which was filed on behalf of G. Coleman with the United States District Court for the Northern District of New York on or about October 16, 1998.² Pursuant to an order signed by United States Magistrate Judge Gustave DiBianco on November 24, 1998, the issues of removal/remand were deferred to this Court for determination.

The Court heard oral argument on the above matters on December 1, 1998, in Syracuse, New York. The matters were adjourned for further argument on December 15, 1998, in order

¹ In response to a motion filed by Allianz Life Insurance Company of North America ("Allianz") on July 9, 1998, seeking relief from the automatic stay, the Court signed an order on July 23, 1998, permitting Allianz to continue an action ("Interpleader Action") in New York State Supreme Court, Onondaga County ("State Court"). The Order allowed the State Court to hear and determine Allianz' motion for an order terminating the Flexible Premium Deferred Annuity Policy No. 33145486 ("Annuity"). The Order also allowed Allianz to deposit the case surrender proceeds of the Annuity with the Onondaga County Treasurer. On August 10, 1998, the Hon. James C. Tormey, III, signed an order in the Interpleader Action permitting Allianz to deposit the proceeds with the Onondaga County Treasurer.

² On August 12, 1998, a Notice of Motion seeking removal of the Interpleader Action to this Court was filed on behalf of Nelson. On September 17, 1998, the Court signed an order denying the motion without prejudice on the basis that it was procedurally defective. In the interim, a Notice of Removal of the Interpleader Action was filed with the District Court by Nelson on September 16, 1998.

for all parties to have an opportunity to review the papers, including the Order of Judge DiBianco. The Court provided the parties with an opportunity to file memoranda of law, and the matters were submitted for decision on December 31, 1998.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction of these contested matters pursuant to 28 U.S.C. §§ 1334, 157(a), (b)(1), (b)(2)(A), (E), (G) and (O).

FACTS

The Debtor filed a voluntary petition (“Petition”) pursuant to chapter 13 of the Bankruptcy Code (11 U.S.C. §§ 101-1330)(“Code”) on May 18, 1998. In Schedule B attached to the Petition, the Debtor claims the proceeds of the Annuity in the amount of \$17,000 as an asset with a notation that the monies were to be turned over to G. Coleman pursuant to a divorce decree. According to Schedule C, the Debtor also claims that the monies are exempt. The Debtor lists Nelson as holding a priority claim for child support in the amount of \$1,300. There is a notation that her claim “is treated as secured by consent to judgement which attaches to annuity at least to extent of debtor’s interest in annuity.”³

³ Nelson received a judgment against the Debtor from the Onondaga County Family Court in the amount of \$9,300 for child support arrears. *See* Affirmation of Marilyn Miller, Esq., opposing remand and relief from the automatic stay, at Exhibit 1. A second judgment in the amount of \$3,500 was entered on February 3, 1998. *See id.* at Exhibit 2.

On November 20, 1997, Justice Tormey signed a Judgment of Divorce. *See* G. Coleman's Motion at Exhibit "A". Incorporated in the Judgment of Divorce is an Opting Out Agreement entered into by the Debtor and G. Coleman which was reduced to writing on October 9, 1997. Under the terms of the Opting Out Agreement, the Debtor was required to transfer to G. Coleman all his right, title and interest in the Annuity. In turn G. Coleman agreed to pay the Debtor \$4,000, as follows: The sum of \$500 was to be paid to the Debtor's bankruptcy attorney on or before October 10, 1997. Immediately thereafter, the Debtor was to file a bankruptcy petition and "such bankruptcy shall include, to the best of ability and within the guidelines of the law, the elimination of any liens against the real property at 54 W. Genesee Street, Skaneateles, New York ("Real Property")." The Opting Out Agreement further provides that the Debtor was to transfer the Real Property to G. Coleman, at which time she was to pay him \$500.⁴ It was also agreed that if the liens against the Real Property were "satisfactorily resolved either by the bankruptcy or by Mr. Coleman," he was to receive the balance of \$3,000.⁵ The Opting Out Agreement also states that the sum of \$4,000 was to be paid out of the Annuity or out of other funds. *See id.* at Exhibit B. Debtor's counsel acknowledges that he received payment of \$500.

None of the parties appear to dispute that the Debtor never transferred his interest in the Annuity to G. Coleman by giving written notice to Allianz as required in the annuity contract. According to counsel representing G. Coleman, the monies used to establish the Annuity were

⁴ According to the Debtor's Statement of Financial Affairs, he transferred the Real Property to G. Coleman by quit claim deed on or about October 22, 1997.

⁵ On Schedule C, attached to the Petition, the Debtor claims a cash exemption of \$3,000 based on an "[a]warded cash settlement in divorce decree that debtor believes is uncollectible. The award is subject to debtor's filing a bankruptcy petition and obtaining a discharge for first and second mortgages" on the Real Property.

proceeds recovered by her in connection with a personal injury action. The policy was apparently owned jointly, with the Debtor identified as the “annuitant” and G. Coleman as the “beneficiary.” It is alleged by G. Coleman’s counsel that some of the monies were withdrawn from the Annuity by the Debtor by forging her name and that Justice Tormey determined that the balance of the monies remaining should be conveyed to G. Coleman as equitable distribution.

DISCUSSION

Central to the resolution of these matters is the issue of whether the proceeds of the Annuity are property of the estate. Code § 541(a)(1) defines property of the estate as including “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). While the scope of Code § 541(a)(1) is broad, *see United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205, 103 S.Ct. 2309, 2313, 76 L.Ed.2d 515 (1983), it does not permit a debtor to acquire greater rights than he was entitled to prior to filing his petition. *See Brown v. Dellinger (In re Brown)*, 734 F.2d 119, 124 (2d Cir. 1984).

The determination of the extent of those property rights as of the petition date is a matter of state law unless it is shown that some federal interest requires a different conclusion. *See Butner v. United States*, 440 U.S. 48, 54-55, 99 S.Ct. 914, 917-18, 59 L.Ed.2d 136 (1979). For purposes of equitable distribution, Section 236 of the New York Domestic Relations Law (“DRL”) defines “marital property” as “all property acquired by either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action, regardless of the form in which title is held.” Therefore, the Annuity

constitutes marital property. DRL § 236, Part B, subd. 1(c). DRL § 236, Part B, subd. 3, recognizes an agreement made by the parties which provides for the “ownership, division or distribution of separate and marital property” providing the agreement is in writing and subscribed by the parties and acknowledged or proven in the manner required to entitle a deed to be recorded.” In this case, the Opting Out Agreement, subscribed to by both the Debtor and G. Coleman on October 9, 1997, required the Debtor to transfer all his right, title and interest in the Annuity. As a result, a debt or “right to payment” arose from the Debtor to G. Coleman.

DRL § 234 authorizes a state court in a matrimonial action to “determine any question as to the title to property arising between the parties” Where a state court has not fixed the equitable distribution rights agreed to by the parties by entry of a judgment, the filing of a bankruptcy petition renders the rights of the nondebtor spouse to the debtor’s property no better than those of an unsecured creditor. *See In re Greenwald*, 134 B.R. 729, 731 (Bankr. S.D.N.Y. 1991) (citations omitted). “[A]t no point prior to judgment does the new law [DRL 234] itself create any contingent or present vested interests, legal or equitable, by virtue of the parties marital status prior to a judgment dissolving their union.” *Leibowits v. Leibowits*, 93 A.D.2d 535, 549, 462 N.Y.S.2d 469, 478 (N.Y. App. Div. 1983) (emphasis added). Therefore, until Justice Tormey signed the Judgment of Divorce, all that G. Coleman had was a claim against the Debtor.

In this case, however, Justice Tormey signed a Judgment of Divorce on October 20, 1997, which incorporated the terms of the Opting Out Agreement and provided that the Annuity was to be transferred to G. Coleman. This occurred some seven months prior to the Debtor’s filing of his Petition. “It is widely recognized that property awarded to a non-debtor spouse pursuant to a divorce decree finalized prior to the debtor spouse’s bankruptcy is not part of the debtor’s

estate.” *In re Purpura*, 170 B.R. 202, 208 (Bankr. E.D.N.Y. 1994) (citations omitted). Accordingly, this Court concludes that the Annuity is not property of the estate. The fact that the Debtor failed to provide written notice to Allianz to effect the transfer of legal title does not alter this conclusion. *See id.* at 209 (stating that the debtor was merely acting as “an agent for the transfer of property to its rightful owner, i.e., his former wife.”)

The Court also finds no merit in the suggestion by Debtor’s counsel that until certain “conditions precedent” had been satisfied, the Debtor had no obligation to transfer the Annuity. Debtor’s counsel acknowledges receipt of \$500 from G. Coleman. According to Schedule C, the Debtor acknowledges that payment of \$3,000 in exchange for release of the liens on the Real Property was “uncollectible.” It is unclear whether G. Coleman paid the Debtor \$500 at the time the Real Property was allegedly transferred to her by quit claim deed. However, it is also noteworthy that the parties apparently anticipated the possibility that at least a portion of the \$4,000 be paid from the Annuity, leaving the Court with the clear sense that the payments were not intended to be conditions precedent to the transfer of the Annuity.

Based on the foregoing, it is hereby

ORDERED that the Trustee’s motion for turnover of the monies being held by the Onondaga County Treasurer is denied; it is further

ORDERED that G. Coleman’s request for relief from the automatic stay to allow the State Court to determine the right and title to the Annuity is granted⁶, and it is finally

ORDERED that G. Coleman’s motion for remand of the Interpleader Action to State

⁶ The finding that the Annuity is not property of the estate actually renders the request moot.

Court is granted.

Dated at Utica, New York

this 13th day of January 1999

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge